IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.P.No.14189 of 2004

Bhuvaneswari Nagar and
V.G.P. Selva Nagar
Welfare Association,
rep. By its President,
C.Palanichamy Thevar,
Plot No.51, V.G.P.Selva Nagar,
Vijaya Nagar,
Chennai 42,
Reg.No.404/96. .. Petitioner

-vs-

1. The Commissioner,
   Chennai Corporation,
   Rippon Building,
   Chennai.

2. V.G.Paneerdoss and Co.,
   Jones Road,
   Saidapet,
   Chennai 15. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the first respondent to remove the encroachments and demolish the construction made by the 2nd respondent on the 40 feet public road viz., at the entrance of V.G.P.Selva Nagar 1st Main Road in S.No.331 of Velachery Village and thereafter execute the repair work on the 40' feet public road.

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For Petitioner : Mr.S.Doraisamy
For R-1 : Mr.E.R.K.Moorthy
For R2 : No Appearance

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

Bhuvaneswari Nagar and V.G.P. Selva Nagar Welfare Association approached this Court to issue a writ of mandamus directing the first respondent – the Commissioner, Chennai Corporation, to remove the encroachments and demolish the construction made by the 2nd respondent on the 40 feet public road viz., at the entrance of V.G.P.Selva Nagar 1st Main Road in S.No.331 of Velachery Village and thereafter, execute the repair work on the 40 feet public road.

2. The president of the petitioner association has sworn to an affidavit wherein it is stated that the said association was formed in the year 1996, the registration number is 44 of 1996 and registered under the Societies Registration Act. The petitioner association was formed for the welfare of the residents of Bhuvaneswari Nagar and V.G.P.Selva Nagar. According to the petitioner, the members of the petitioner association are all residents of V.G.P.Selva Nagar and Bhuvaneswari Nagar. Both the Nagars were formed in the year 1973. In the western side of the their Nagar, there is a 150 feet road called Tambaram – Vellachery Road, which is a High Way. From the said road to their Nagar, there is 40 feet road connecting their Nagar to the Main Road. The said 40 feet road is Tar topped road, which is vested with the first respondent Corporation. On both sides of the 40 feet road, there are street lights which are maintained by the first respondent. Under the 40 feet road, there is a main pipe line laid by the Chennai Metro Water and Sewage Board, for linking all the sewages of their Nagar. The residents are using the said road for the past 31 years without any hindrance. The said road is main linking and essential road for the residents of the above locality. While so, on 04.05.2004, the second respondent herein encroached a portion of the road about 291 feet at the entrance to their Nagar i.e. corner of the Main Road (150 feet Road) and V.G.P.Selva Nagar 1st Main Road (40 feet Road) and destroyed the road by removing street lights and Tar tops and caused great hindrance to the residents. On behalf of the residents, the petitioner gave a representation on 04.05.2004 to the first respondent for removal of the encroachments made by the second respondent on the said Road. However, no action was taken by the first respondent. Hence, again on 06.05.2004, the petitioner gave a reminder to the first respondent. Even then, no action was taken by the first respondent.

3. On 15.05.2004, the second respondent started construction of the compound wall in the encroached portion and thereby, created obstruction to the residents of their Nagar. The second respondent has illegally encroached the public road which is much against the welfare of the petitioner's association. Because of the encroachments, the entire traffic in the Tambaram – Velachery Road and V.G.P. Selva Nagar 1st Main Road is affected. The first respondent is bound to remove the

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encroachments as and when it is brought to the knowledge of the authorities. The above road is the main road connecting all the residents of V.G.P.Selva Nagar and Bhuvaneswari Nagar with Velachery.

4. It is further stated that Section 220 of the Madras City Municipal Corporation Act, 1919 prohibits construction of any wall or erecting of any fence over any street. If there is any encroachment, the first respondent is bound to remove such encroachment. In other words, as per Section 220 of the said Act, no one shall build any wall or erect any fence or any other obstruction or projection in or over any street. With these averments, the petitioner prayed for appropriate direction to the first respondent for removal of the encroachments and after clearing the same, execute the repair work on the 40 feet public road.

5. Pursuant to the order of this Court, notice was served on the first respondent as early as on 30.06.2004 and the second respondent on 29.06.2004. In spite of the fact that notice was duly served on the second respondent, they have not chosen to engage a counsel to contest the above writ petition. The first respondent alone filed a counter affidavit dated 20.02.2007. It is useful to refer the stand taken by the Commissioner in the said counter affidavit. With reference to the claim of the petitioner association, the Commissioner has mentioned that the existing width of the road is 40 feet. It is further stated that the second respondent has not encroached the road surface. In such circumstances, according to the Commissioner, initiating proceedings against the second respondent does not arise. Except the above statement that the width of the road is 40 feet and the second respondent has not encroached the road surface, the Commissioner has not furnished any other information, though specific averments have been made by the President of the petitioner association.

6. At the time of hearing of the writ petition, Mr.S.Doraisamy, the learned counsel appearing for the petitioner strongly disputed the statement of the Commissioner as stated in his counter affidavit dated 20.02.2007. In view of the assertion of the learned counsel for the petitioner and in the absence of representation by the second respondent, we appointed Mr.V.P.Sengottuvel, as Advocate Commissioner with a request to inspect the property in question and submit a report. Pursuant to the same, the Advocate Commissioner has submitted his report on 05.03.2007 along with a plan showing 40 feet V.G.P.Selva Nagar 1st Main Road, Velachery, Chennai. The report shows that the Advocate Commissioner, prior to his visit issued notice to the learned counsel for the petitioner, learned counsel for the first respondent as well as the second respondent and visited the said place at 12 noon on 03.03.2007. Inasmuch as the factual information about the existence of 40 feet road is relevant for the disposal of the writ petition, we extract the report of the Advocate Commissioner, which reads as under:

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"3. I visited the said place in the presence of the writ petitioner association's President C.Palanichamy Theavar, the counsel for the petitioner and Thiru R.Ramachandra, Asst. Engineer, Division 153, Corporation of Chennai, Velachery. No one on the side of the 2nd respondent were present at the time of inspection. At the time of inspection the Asst. Engineer, Division 153, Corporation of Chennai produced a xerox copy of the approved lay out plan for VGP Selva Nagar bearing LPDM/DTP.No.16/73 revising the earlier approved plan in LPDM/DTP 32/68. In the approved plan there is a 40 Feet road at the entrance of VGP Selva Nagar starting from Velachery – Tambaram Main Road to the Plots in the said layout.

4. On measurement of the starting point of VGP Selva Nagar First Main Road on the side of Velachery - Tambaram Main Road I found that the width of the road is only 24 feet and 3 inches and after 200 feet at the junction of VGP Selva Nagar First Main Road and VGP Selva Nagar first cross street the width of the road is 25 feet and 6 inches which is shown in yellow colour in the sketch enclosed herewith. On verification I found that only this road is now under use by the residence of that area. There is a wall for a height of 4 Feet seem to have been put up by somebody in the said 40 feet road and the portion between the said wall and the compound wall on the eastern side of the road is now lying vacant with bushes, which shown in pink colour in the sketch enclosed herewith. There are 3 electric post lying in the area under occupation by somebody on the land marked for 40 feet road.

Therefore, I humbly submit that the 40 feet public road at the entrance of VGP Selva Nagar First Main road is now only having a width of 24 feet and 3 inches on one side and 25 feet 6 inches on the other side and the remaining area of the road being shown in the approved plan is lying vacant with bushes in between 4 feet wall and the compound wall of the neighbouring plot on the eastern side."

7. The report of the Advocate Commissioner makes it clear that the 40 feet public road at the entrance of V.G.P.Selva Nagar 1st Main Road is having a width of 24 feet and 3 inches on one side and 25 feet 6 inches on the other side. The report also shows that the remaining area of the road being shown in the approved plan is lying vacant with bushes in between 4 feet wall and the compound wall of the neighbouring plot on the eastern side.

8. It is relevant to point out that at the time of inspection by the Advocate Commissioner, an Assistant Engineer, Division 153, Corporation of Chennai who was present, produced xerox copy of the

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approved layout plan for VGP Selva Nagar bearing LPDM/DTP.No.16/73 revising the earlier approved plan in LPDM/DTP 32/68. It was shown by the Assistant Engineer that there is 40 feet road at the entrance of VGP Selva Nagar starting from Velachery - Tambaram Main Road to the plots in the said layout. The said factual information as noted by the Advocate Commissioner cannot be disputed since as pointed above, at the time of inspection, the concerned Officer, viz., the Assistant Engineer, Division 153 was very well available with the xerox copy of the approved layout plan.

9. When we confront the learned counsel appearing for the Corporation with reference to the report of the Advocate Commissioner as well as the information furnished by the Commissioner in his counter affidavit dated 20.02.2007, the learned counsel appearing for the Corporation prayed time to clarify the same. At his request, we granted further time to clarify the position. Today, the Commissioner has filed a reply affidavit dated 14.03.2007 to the report of the Advocate Commissioner. As far as the width of the road as stated in his earlier counter affidavit dated 20.02.2007, the Commissioner in the present reply affidavit vide paragraph No.2 has stated that due to oversight it has been wrongly averred in the counter affidavit "whereas the existing width of road is also 40 feet", instead of the word 'not', the word 'also' has been wrongly written. In the same paragraph, the Commissioner has stated that there is no such 40 feet road in the disputed area as per the report of the Advocate Commissioner.

10. In the same reply affidavit in paragraph No.3, the Commissioner has stated that so far, the disputed area shown as dotted line has not been approved and also has not been handed over to the Corporation of Chennai, by the owner. As rightly pointed out by the learned counsel for the petitioner, the above said information which is available in paragraph No.3 of his reply affidavit cannot be accepted for the simple reason that his own reply affidavit makes it clear that the layout has been approved by the Joint Director. It is useful to point out paragraph No.1 of his reply affidavit which reads as under:

> "I submit that the Layout No.16/73 was approved by the Joint Director, Directorate of Town and Country Planning Government of Tamil Nadu, Chennai - 600 002."

Apart from the above statement, the learned counsel for the petitioner has also placed authenticated xerox copy of the layout plan No.16/73 which speaks about the 40 feet road. We verified the xerox copy of the above said plan, which contains the signatures of all the authorities, viz., the Assistant Director, the Deputy Director and the Special and Joint Director of Town Planning, Government of Tamil Nadu. In addition to the same, the learned counsel for the petitioner has already brought to our notice a letter in Na.Ka.No.2971/77 A4 dated 25.03.1978 issued by the Executive Officer, Velachery Town Panchayat, Chennai - 42 addressed to the second

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respondent herein, which also refers approved layout plan Nos.16/73, 231/74 etc.

11. All the above mentioned particulars clearly show that the layout was duly approved in No.16/73 by the competent authority showing the width of the road as 40 feet. This is also evident from the report of the Advocate Commissioner. In such circumstances, we are unable to accept the contradictory stand taken by the first respondent. It is unfortunate that without verifying the relevant records and getting proper report from the Field Officers, the Commissioner has sworn an affidavit giving incorrect information to this Court. It is not clear why the Commissioner has pleaded on behalf of the second respondent, when they have not evinced any interest in contesting the case of the writ petitioner. The stand taken by the first respondent cannot be appreciated by this Court. Even his reply to the reply affidavit dated 14.03.2007 was filed only on the direction of this Court in order to rectify the mistake available in his counter affidavit dated 20.02.2007. We are satisfied that the petition association has made out a clear case and there is no difficulty in arriving a conclusion that the second respondent had encroached on the 40 feet public road. In such circumstances, the first respondent is duty bound to clear the same and after clearance, execute proper repair work on the 40 feet public road. Before complying with the said direction, the first respondent is directed to follow the rules/procedure and take appropriate steps for removal of the encroachments on the 40 feet public road. The said recourse shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs.

12. The first respondent is directed to pay a sum of Rs.5,000/- and the petitioner association, another sum of Rs.5,000/- towards remuneration to the Advocate Commissioner within a period of four weeks from the date of receipt of a copy of this order.

gms

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Commissioner,
Chennai Corporation,
Rippon Building,
Chennai.
+ One CC to Mr. V.P. Senguttuvel SR 16054
+ One cc to Mr. E.R.K. Moorrthy sR 16057
+ One cc to Mr. S. Duraisamy Advocate SR 15831
KLT (co)
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